

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GLOBAL ONE FINANCIAL, INC. : :

Plaintiff : Civil Action No. 06-1226(FSH)

v. : :

FOOT & ANKLE INSTITUTE OF : REPORT AND RECOMMENDATION
NORTH JERSEY, P.A., et al. : :

Defendants : :

This matter having come before the Court by way of letters dated April 14, 2008 and April 15, 2008, regarding defendant Foot & Ankle's failure to provide the plaintiff with its portion of the Final Pretrial Order and its failure to provide proof that it has filed for bankruptcy; and the Court having reminded the defendant that the requirement to submit its portion of the joint proposed final pretrial order continued unless it presents proof that it has filed bankruptcy;

and the Court having extended the deadline to present the joint proposed final pretrial order to the Court;

and the defendant having been notified that if it failed to present its portion of the joint proposed final pretrial order in accordance with the schedule set forth in the Order dated April 7, 2008 and did not file bankruptcy before the date set forth herein, then the Undersigned would recommend to the United States District Judge that Her Honor strike the Answer, enter default and grant the plaintiff leave to file a motion for the entry of default judgment;

and the Court having been advised that the defendant failed to provide either its portion

of the Final Pretrial Order or proof that it has filed for bankruptcy, see Letter of Joseph P. Turk, dated April 14, 2008;

and the defendant advising that there is an intent to file bankruptcy and that the principal of the defendant advised defense counsel that he “hope[s] to speak with a bankruptcy attorney sometime today (April 15, 2008) and thereafter . . . meet” with such an attorney, see Letter of Steven H. Scherfers, dated April 15, 2008;

and there being nothing in the letter to explain why this had not occurred by the deadline set in the Order dated April 7, 2008 nor is there any explanation as to why the defendant did not present its portion of the final pretrial order to the plaintiff for inclusion in the joint proposed final pretrial order;

and the defendant having been advised of the consequence of its noncompliance;

and the defendant having provided no reason for its failure to comply or good cause to extend any of the deadlines;

and the Undersigned therefore determining that the Final Pretrial Order that it drafted should be submitted for review and, if appropriate, entry;

and the Undersigned further determining that the defendant’s failure to comply should result in a recommendation that its Answer be struck and default be entered;

and the Undersigned further determining that if the recommendation is not adopted, then the entry of the Final Pretrial Order will fix the proofs that can be offered at trial and defendant’s failure to include materials for inclusion into the Final Pretrial Order will restrict the evidence that plaintiff will be permitted to introduce;

and for good cause shown,

IT IS ON THIS 15th day of April, 2008

RECOMMENDED THAT THE United States District Judge strike defendant Foot & Ankle's Answer and enter default and permit the plaintiff to file a motion for default judgment. The parties have ten days to file objections to this recommendation. No application for default judgment may be made unless and until the recommendation is adopted;

IT IS FURTHER ORDERED that, no later than **April 19, 2008**, the plaintiff shall submit the proposed Final Pretrial Order and indicate in each portion of the order where information from the defendant is required, whether or not the defendant has provided any information for inclusion in the Order. Upon review, and if deemed it acceptable, the proposed Final Pretrial Order may, in the Court's discretion, be entered as the Final Pretrial Order in this case and it will thereby fix the proofs and legal issues that may be presented at trial; and

IT IS FURTHER ORDERED that the Final Pretrial Conference scheduled for April 17, 2008 is cancelled.

s/Patty Shwartz

UNITED STATES MAGISTRATE JUDGE